

General Information Letter: The Department has no authority to order a purchaser who has withheld consideration while awaiting Department review of bulk sale notification to pay over the amount withheld.

January 14, 2003

Dear:

Your letter to Mark Varner of the Department's Collection Bureau dated January 3, 2002, was referred to this office for a reply. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information, the regulation governing the issuance of letter rulings, 2 III. Adm. Code Part 1200 regarding rulings and other information issued by the Department, can be accessed at the Department's website. That address is www.revenue.state.il.us/legalinformation/regs/part1200. Your letter did not contain a mailing address, therefore we are issuing our reply to the address given for your company on our Release of Bulk Sales Stop Order.

The nature of your question and the information provided require that we respond only with a GIL.

In your letter you state in part as follows:

Enclosed please find a copy of your letter dtd 12/13/02 releasing the bulk sales stop order for the sale of COMPANY assets. Also enclosed please find a letter from my (seller's) attorney dtd 12/18/02 requesting immediate release of these funds.

Now on 01/02/03, three weeks after your original letter, buyers attorney finally responds with a letter requesting approval of buyer to release my funds.

I am disturbed by the amount of time they are taking to respond to your release notice. I am also questioning why seller would have any authority over a state sales tax escrow.

Without going into exhaustive detail, please be advised that similar provisions in the Illinois Income Tax Act (35 ILCS 5/902(d)) and Sales Tax Act (35 ILCS 120/5j) impose a duty on purchaser/transferees to withhold a portion of the consideration in transactions involving sale/transfer outside the usual course of business of "the major part" of the goods, furniture, machinery or real property of any business which is subject to those taxes. These provisions are designed to secure collection of tax owed by the seller/transferor. Once the Department receives notice of the transaction, it issues a Stop Order requiring escrow of the portion of the consideration until the seller/transferor's account has been reconciled/satisfied. Following that, it will issue a Release from Bulk Sales Stop Order which then authorizes purchaser/transferee to release the remaining consideration to the seller/transfer.

The Release from Bulk Sales Stop Order to which you refer authorizes your purchaser/transferee to release the remaining consideration to you from escrow. There is no statutory time limit regarding release of these funds. The Department of Revenue has no authority to force the release of these funds.

As stated above, this is a GIL which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you wish to obtain a PLR which will bind the Department with respect to the application of the law to specific facts, please submit a request conforming to the requirements of *2 Ill. Adm. Code Part 1200*.

Sincerely yours,

Jackson E. Donley,
Senior Counsel-Income Tax